

D/F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BRIGITTE STELZER,

Plaintiff,

-against-

RHIBOT ART LLC,

Defendant.
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NICHOLAS G. GARAUFIS, United States District Judge.

ORDER

18-CV-4339 (NGG) (RLM)

On July 31, 2018, Plaintiff Brigitte Selzer commenced this copyright infringement action against Rhibot Art LLC. (See Compl. (Dkt. 1).) She served the complaint on Defendant, but took no further action to prosecute her claims until prompted by Magistrate Judge Roanne L. Mann's Order to Show Cause filed on January 15, 2019. (See Order to Show Cause (Dkt. 7).) In response, Plaintiff filed a Request for Certificate of Default and stated that she would move for default judgment within 21 days of Entry of Default. (See Request for Certificate of Default (Dkt. 8); Letter in Response to Order to Show Cause (Dkt. 9).) The Clerk of the Court entered Defendant's default on January 25, 2019, but Plaintiff failed to file a motion for default judgment. (See Entry of Default (Dkt. 10).)

By Order to Show Cause dated February 26, 2019, Judge Mann again directed Plaintiff to show cause, in writing, why the case should not be dismissed for lack of prosecution, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. (See Second Order to Show Cause (Dkt. 11).) Plaintiff's counsel responded by letter, advising the court that he had been trying, unsuccessfully, to contact Defendant to ascertain whether this matter could be resolved between the parties. (See Status Report (Dkt. 12).) On March 6, 2019, Judge Mann granted Plaintiff's

request for an additional 30 days to file a motion for default judgment. (See Mar. 6, 2019 Order.) Plaintiff again failed to do so.

On April 18, 2019, after the deadline for moving for default judgment had once against expired, Judge Mann filed a sua sponte report and recommendation (“R&R”), in which she recommended that the complaint be dismissed with prejudice for lack of prosecution. (See R&R (Dkt. 13).) Later that day, Plaintiff filed a notice of voluntary dismissal without prejudice, but failed to object to the R&R. (See Notice of Voluntary Dismissal (Dkt. 14).)

Because no party has objected to the R&R and the time to do so has passed, the court reviews the R&R for clear error. See Fed. R. Civ. P. 72(b)(2); Porter v. Potter, 219 F. App’x 112, 113 (2d Cir. 2007) (summary order) (“[F]ailure to object timely to a magistrate’s report operates as a waiver of any further judicial review of the magistrate’s decision.” (alteration in original) (quotation marks and citation omitted)); Gesualdi v. Mack Excavation & Trailer Serv., Inc., No. 09-CV-2502 (KAM) (JO), 2010 WL 985294, at *1 (E.D.N.Y. Mar. 15, 2010) (“Where no objection to the [R&R] has been filed, the district court need only satisfy itself that there is no clear error on the face of the record.” (quotation marks and citation omitted)).

Finding no clear error, the court ADOPTS IN FULL the R&R (Dkt. 13). Plaintiff’s complaint (Dkt. 1) is dismissed with prejudice for lack of prosecution. The Clerk of Court is respectfully DIRECTED to enter judgment and close this case.

SO ORDERED.

Dated: Brooklyn, New York
June 18, 2019

s/Nicholas G. Garaufis
NICHOLAS G. GARAUFIS
United States District Judge